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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

v.

DAVID GILBERT SAFFRON
a/k/a DAVID GILBERT and
CIRCLE SOCIETY, CORP.,

Defendants.

Case No. 2:19-cv-1697-JAD-DJA

**PLAINTIFF CFTC'S MOTION TO STRIKE
DEFENDANTS' RESPONSE TO THE
CFTC'S LETTER TO THE COURT (ECF
NO. 94)**

Plaintiff Commodity Futures Trading Commission ("Commission" or "CFTC") respectfully moves the Court to issue an order striking Defendants' Response Regarding Plaintiff's Letter to the Court dated January 4, 2021 ("Response to the CFTC's Letter," ECF No. 94). As discussed below, Defendants' Response to the CFTC's Letter is impermissible under Local Rule IA 7-1 and seeks to extend expired filing deadlines or modify previous Court orders without seeking leave of court to do so under Local Rule IA 6-1(a) and Fed. R. Civ. P. 6(b)(1)(B). Defendants' Response also fails to advise the Court that the CFTC previously notified defense counsel of Defendants' contempt of the Court's prior orders and offered to discuss the pending issues.

The CFTC filed the January 4, 2020 Letter to the Court pursuant to Local Rule IA 7-1

1 inquiring as to the status of its Motion for Default Judgment against Defendants (ECF No. 61)
2 and Motion for Sanctions in Furtherance of Defendants' Non-Compliance with the Court's Civil
3 Contempt Order ("Motion for Sanctions," ECF No. 62). On January 5, 2021, Defendants filed a
4 Response to the CFTC's Letter (ECF No. 94), which is not permitted under Local Rule IA 7-1.

5 It appears as though Defendants are attempting to extend time and/or modify the
6 requirements of multiple Court orders, including the Order of Preliminary Injunction ("PI
7 Order," ECF No. 31) and Civil Contempt Order ("Contempt Order," ECF No. 51). Defendants
8 have failed to seek leave of court for any extension of time or modification of previous Court
9 orders by a proper motion pursuant to Local Rule IA 6-1(a) (providing that requests to extend
10 time made after the deadline expired "will not be granted unless the movant or attorney
11 demonstrates that the failure to file the motion before the deadline expired was the result of
12 excusable neglect") and Fed. R. Civ. P. 6(b)(1)(B) ("the court may, for good cause, extend the
13 time on motion made after the time has expired if the party failed to act because of excusable
14 neglect").
15

16 Defendants fail to acknowledge the Court's PI Order and Civil Contempt Order, offer any
17 explanation as to their complete failure to comply with either order, or show that their delay was
18 the product of excusable neglect. As previously briefed by the CFTC, Defendants have
19 displayed an unsettling degree of contempt for the authority of this Court, including failing to
20 produce a single business record or an accounting of assets, continuing to violate the asset freeze
21 provisions of the PI Order, and failing to pay any of the \$668,000 in daily fines accrued to date
22 as mandated by the Contempt Order.¹ See, e.g., Motion for Sanctions, ECF No. 62. Even
23
24

25
26
27 ¹ See Civil Contempt Order, ECF No. 51 at ¶¶ 5-6 (ordering each Defendant to pay daily compliance fines of
28 \$1,000 per day beginning on Feb. 8, 2020).

1 assuming the Court accepts the Defendants' Response to the CFTC's Letter as a motion to
 2 extend time or motion to modify the previous Court Orders, the CFTC submits that the ongoing
 3 failure of Defendants to comply with the Court's previous orders and deadlines precludes their
 4 ability to file such a motion.

5 Finally, Defendants allege in their Response that a sixty-day period is needed so that they
 6 can "work with the Defendants to address the CFTC's various document requests" and work
 7 with the CFTC's counsel "to resolve issues pending." *See* Response to the CFTC's Letter, ECF
 8 No. 94 at 2. Defendants fail to advise the Court that the CFTC informed Defendants' counsel of
 9 Defendants' violations of the PI Order and Contempt Order *prior* to the entry of counsel's
 10 appearance. *See* Email from CFTC to J. Gutke dated Dec. 8, 2020 (attached hereto as Exhibit 1).
 11 As noted in the email, the CFTC also offered to discuss Defendants' non-compliance with the
 12 orders and pending litigation issues but never heard back from Defendants. *See id.* Given that
 13 Defendants have been in violation of the Court's Orders for more than a year, have produced
 14 neither business records nor an accounting of assets in that period, have intentionally and
 15 repeatedly violated the Court's asset freeze, and owe \$668,000 in daily compliance fines to date,
 16 the CFTC submits that further delay will accomplish nothing.

19 CONCLUSION

20 For the foregoing reasons, the CFTC respectfully requests that the Court strike
 21 Defendants' Response to the CFTC's Letter. In the event the Court deems it appropriate to hold
 22 a hearing on the relief requested herein, the CFTC is available to participate in person or
 23 telephonically at the Court's earliest convenience.

24 Dated: January 6, 2021

Respectfully submitted,

26 By: /s/ Danielle E. Karst

Danielle E. Karst

27 Timothy J. Mulreany

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CERTIFICATE OF SERVICE

I certify that on January 6, 2021, I filed a copy of *Plaintiff CFTC's Motion to Strike the Defendants' Response to the CFTC's Letter to the Court*, with the Clerk of the Court using the CM/ECF system, which will serve notice to counsel of record below.

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(Counsel for Defendants David Gilbert Saffron and Circle Society, Corp.)

/s/ Danielle E. Karst

Danielle E. Karst